

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESAL PRICE
LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:

CIVIL ACTION No. 01-12257-PBS

*State of Nevada v. American
Home Products Corp., et al.,
CV No. 02-12086-PBS*

Judge Patti B. Saris

and

State of Montana v. Abbott Labs, Inc., et al.,
CV No. 02-12084-PBS

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO
ENTER CASE MANAGEMENT ORDER NO. 15 AND CROSS MOTION**

Defendants move for entry of Case Management Order No. 15 and respond to the motion of the States of Nevada and Montana for entry of their Proposed Case Management Order. The parties' respective proposals are very similar. Each is responsive to the Court's request that summary judgment briefing close in time to permit the Court's law clerk to assist in considering summary judgment before leaving in August 2006. The proposals differ, however, essentially in two respects. First, Plaintiffs' proposal unnecessarily and inefficiently delays the exchange of expert liability reports and establishes a schedule for briefing summary judgment motions that bears no relationship to the exchange of expert reports. In particular, plaintiffs' proposal illogically requires defendants to file motions for summary judgment on the same day

plaintiffs file their expert report on liability. In contrast, Defendants' proposal offers a more logical sequence for exchanging expert reports and briefing summary judgment. Second, Plaintiffs' proposal contemplates surreply briefs whereas Defendants' proposal does not. Defendants respectfully suggest that three rounds of briefing are sufficient and a fourth round will only serve to burden the Court further with unnecessary argument.

Because Defendants' proposal maintains the January 31, 2006 discovery cut off that Plaintiffs originally requested and closes summary judgment briefing in May in response to the Court's request, but provides for appropriate sequencing of expert reports and summary judgment briefing, Defendants respectfully submit that their proposal provides the most appropriate compromise to accommodate competing considerations of all parties.

Respectfully Submitted,

ON BEHALF OF ALL DEFENDANTS,

/s/ Lucy Fowler

Nicholas C. Theodorou (BBO# 496730)

Lucy Fowler (BBO# 647929)

FOLEY HOAG LLP

155 Seaport Boulevard

Boston, MA 02210

(617) 832-1000

D. Scott Wise

Kimberley D. Harris

DAVIS POLK & WARDWELL

450 Lexington Avenue

New York, New York 10017

(212) 450-4000

Attorneys for Defendant AstraZeneca Pharmaceuticals LP

Mark D. Smith
LAREDO & SMITH LLP
15 Broad Street, Suite 600
Boston, MA 02109

Scott A. Stempel
John Clayton Everett, Jr.
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

John C. Dodds
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921

Attorneys for Pfizer Inc. and Pharmacia Corporation

April 22, 2005

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that counsel for defendants conferred with counsel for plaintiffs on this motion, and that counsel for plaintiffs do not assent to the motion.

/s/ Lucy Fowler
Lucy Fowler

CERTIFICATE OF SERVICE

I certify that on April 22, 2005, a true and correct copy of the foregoing Defendants' Response to Plaintiffs' Motion to Enter Case Management Order No. 15 and Cross Motion was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties.

/s/ Lucy Fowler
Lucy Fowler